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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/756,846	01/10/2001	Katsunobu Hori	50090-270	6055

7590 04/06/2004
McDermott, Will & Emery
600 13th Street, N.W.
Washington, DC 20005-3096

EXAMINER

VU, HUNG K

ART UNIT	PAPER NUMBER
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2811

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/756,846

Applicant(s)

HORI ET AL.

Examiner

Hung K. Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 6-16 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4 and 17 is/are allowed.
- 6) ☒ Claim(s) 5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 17 is objected to because of the following informalities: In claim 17, line 1, "A" should be changed to "The" for clarity. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akira (JP4-372133, of record) in view of Tao et al. (PN 6,399,515, of record).

Akira discloses, as shown in Figures 1(a) - 1(d), a semiconductor device comprising,

a thick film wiring (7) having a first film thickness;

a thin film wiring (6) having a second film thickness that is smaller than the first film thickness;

a mask (4) covering the surface of the thick film;

the thick film wiring serves as a wiring for an electric supply of the semiconductor device or as a wiring for ground

Akira does not disclose the mask is the hard mask. However, Tao et al. discloses a mask (38a,38b) is used as a hard mask for etching. Note Figure 8 of Tao et al.. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

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substitute the mask of Akira with a hard mask, such as taught by Tao et al. in order to form the wiring layer with enhanced sidewall profile uniformity.

Note that since Tao et al. discloses the hard mask having the same material as claimed, it is inherent that the hard mask is resistant to etching adapted for patterning of the thick film wiring and also to etching adapted for patterning of the thin film wiring, and being resistant to heat.

Allowable Subject Matter

3. Claims 1-4 and 17 are allowed.

Response to Arguments

4. Applicant's arguments filed 10/28/03 have been fully considered but they are not persuasive.

It is argued, at pages 9-10 of the Remarks, that Tao et al. does not advocate replacing a photoresist mask with a hard mask since Tao et al. teaches using a photoresist mask in the formation of the gate electrodes in addition to a hard mask. This argument is not convincing because the claimed language does not specific state whether only a hard mask is used to form the wiring layer. Furthermore, Tao et al. teaches, as shown in Figures 6 and 7, the hard masks 38a and 38b are used to etch the gate electrode.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a hard mask, such as silicon nitride) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the

claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Note that the present specification does not specific state how hard is hard for the hard mask or how soft is soft of the photoresist mask. Also note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In response to applicant's argument that Tao et al. does not teach that the enhanced sidewall profile uniformity is a direct result of using a hard mask but is a result of the Tao et al. process as a whole, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

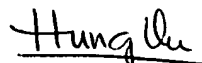
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hung K. Vu whose telephone number is (571) 272-1666. The examiner can normally be reached on Mon-Thurs 6:00-3:30, alternate Friday 7:00-3:30, Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eddie C. Lee can be reached on (571) 272-1732. The Central Fax Number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

Vu

March 31, 2004



Hung Vu

Patent Examiner